

LOUISIANA.

MEMORIAL

OF THE

MAYOR, ALDERMEN, AND INHABITANTS,

OF

NEW ORLEANS.

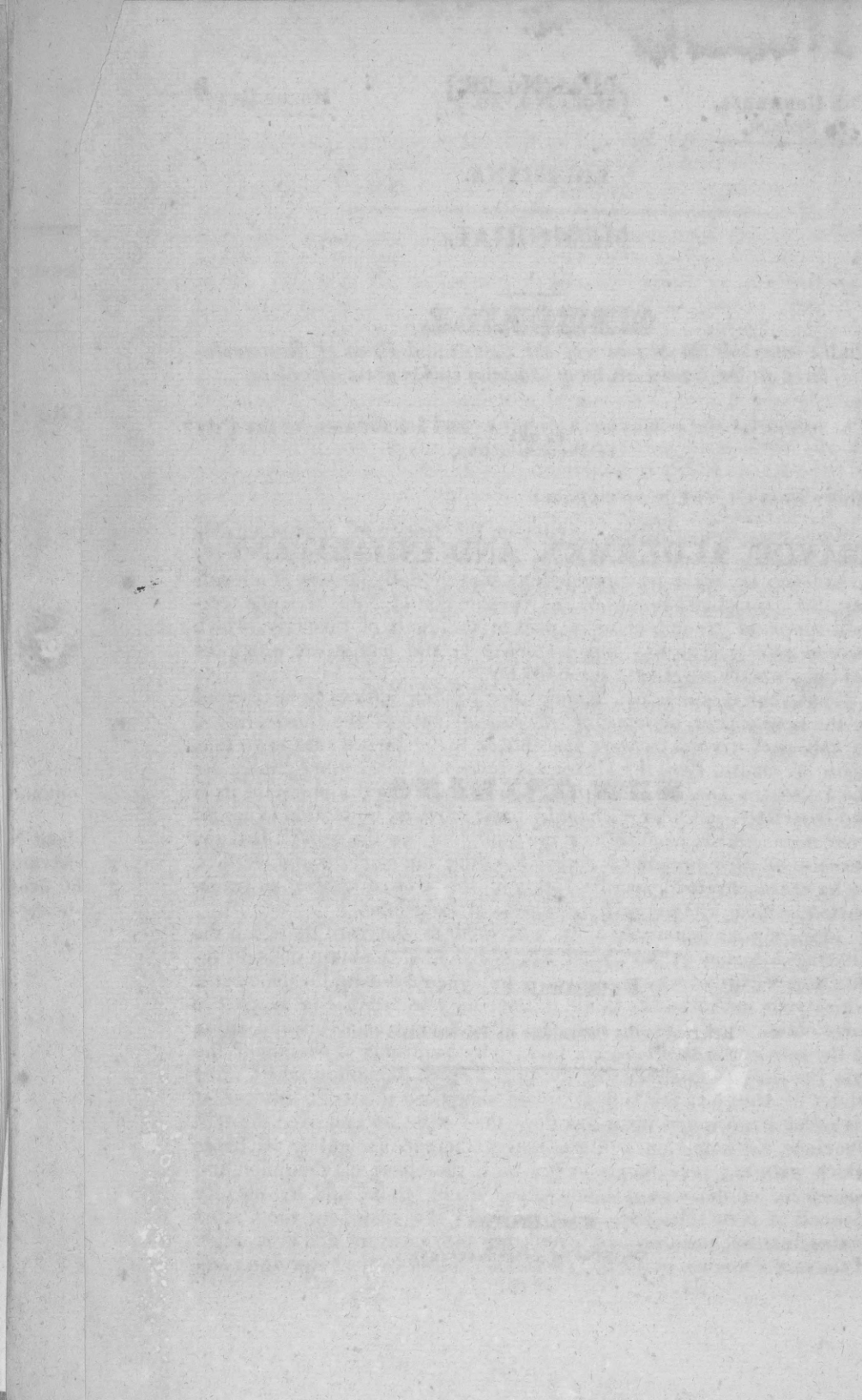
DECEMBER 31, 1827.

Referred to the Committee on Private Land Claims.

WASHINGTON :

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1828.



MEMORIAL.

To the honorable the Members of the Senate and House of Representatives of the United States of America in Congress assembled :

The memorial of the Mayor, Aldermen, and Inhabitants, of the City of New Orleans,

MOST RESPECTFULLY SHEWETH :

That your memorialists, relying on the justice of your honorable body, come before them, and pray that they may be permitted freely to exercise the right which they think they actually possess of alienating, for the use and benefit of the corporation of New Orleans, certain spaces of ground, being a part of the *quais* of this city, which may be sold without any inconvenience to the public use which the said *quais* were originally intended for.

That your memorialists having caused public notices to be inserted in the newspapers, announcing the sale of such of the above alluded to spaces of ground as were susceptible to be turned into town-lots, John W. Smith, Esq. the District Attorney of the United States for the Louisiana District, thought it his duty to solicit and obtain from the District Court before whom he prosecutes, an injunction to inhibit your memorialists from selling the said lots, on the ground that the exercise of their pretended right of selling the same, would, in fact, be an encroachment upon the rights of the United States, as transmitted to them by the treaty of cession of Louisiana.

That, if your honorable body will turn to the petition which the District Attorney of the United States has filed to obtain the said injunction, a copy of which petition is to be found among the documents which your memorialists think it their duty to produce in support of their claim, they will find that the alleged motives of his opposition to the sale of the said lots, are that, "by the treaty of cession of the late Province of Louisiana by the then French Republic to the United States of America, the United States succeeded to all the antecedent rights of France and Spain, as they then were, in and over the said Province, the dominion and possession thereof, including all lands which were not private property; that, therefore, the dominion and possession of the vacant lands so endeavored to be sold by the city Council of New Orleans, must inevitably be vested in the United States, inasmuch as they had, ever since the discovery and occupation of the said Province by France, remained vested in the sovereign; and

had not, any time prior to the date of the said treaty, been granted by the sovereign to the inhabitants of the City of New Orleans."

That were the facts set forth in the petition filed by the District Attorney of the United States, strictly correct, and were it true that the lots which your memorialists intended to have sold for the use and benefit of the Corporation of New Orleans, do really constitute a part of the vacant lands which are within the dominion of the United States, and of which they alone have a right to dispose, then, perhaps, might it be said that that officer acted properly in soliciting the injunction which he has obtained, in order to prevent the sale of those lots, and to have the rights of the United States to the ownership of the same recognized and confirmed by a court of justice, in opposition to the claim and pretensions of the inhabitants of New Orleans.

But that it may be easily demonstrated to your honorable body, as your memorialists expect to do, that there is evidently an error of fact in the allegations upon which the injunction was obtained, inasmuch as the lots in question are no part of the vacant lands which the United States alone have a right to alienate, but are a portion of the quais of New Orleans; that is to say, of one of those public things, which, according to the civil laws which have always governed Louisiana, belong to the inhabitants of cities, boroughs, and other similar places, for whose use they are intended.

Indeed, it is fully established by the most authentic documents that, from the very foundation of the city of New Orleans, there was, between the river Mississippi and the first row of houses fronting the river, a space of a certain breadth, extending on the whole length of this first row of houses, left vacant and designated by the appellation of *quais*, which space the founders intended should remain open for the use of the public, and was, therefore, without the dominion of those things which the then Government of Louisiana had retained the right of alienating.

That, if we recur to the work published at Paris, in the year 1744, by the Rev. Father Charlevoix, under the title of "General History and Description of New France," which contains the historical statement, perhaps the most ancient now extant, of what relates to Louisiana, we shall find, page 434, volume the 2d, of the 4th edition of this work, that, though so far back as the year 1717, the French Government, the then owners of the soil, had begun to lay the foundations of the metropolis of Louisiana, under the name of New Orleans, still this project of settlement went no farther, at that time, than the mere construction of some few houses upon the spot whereon the said city now lies.

That it appears, from the oldest plans of New Orleans, filed in the office of the Marine Charts, at Versailles, which have furnished the data for making out the one contained in the above cited work of Father Charlevoix, volume 2d, page 432, that it was only several years after the foundations of the city had been laid by the French Government, that they thought proper to cause a regular plan of the same to be made out.

That the City Council of New Orleans having, by reference to the work of Father Charlevoix, discovered that there existed in the office of the Marine Charts, at Versailles, one or more plans of the city which might go to establish the rights of its inhabitants to the lots now under consideration, resolved, towards the close of the year 1717, to apply to the proper authorities in France, in order to obtain authenticated copies of the said plans; that the said copies are now filed in their archives and referred to on the present occasion to prove to your honorable body that the claim of your memorialists is well founded.

That the plans of New Orleans of which the City Council have procured copies, are three in number, and appear to have been made out by order of the French Government; an inference easily to be drawn, and evidently resulting from the official capacity of the persons employed in drafting the same, and from the fact of their being filed and recorded in one of the offices of the Navy Department at Versailles.

That the first and oldest of those plans was only made out in the year 1724, by Mr. De Paugé one of the King's engineers; that this, which may be looked upon as the original plan of the foundation of the city, is styled "Plan of the city of New Orleans;" that the embankment or levee which defended the city from inundation, and the buildings erected since the first of September, 1723, are marked on the said plan, at the foot of which, the following words are to be found: "New Orleans, May the 29th, 1724." Signed, De Paugé.

That the second, which is in every respect similar to the first, with the exception of such houses as were built since the year 1724, and are marked thereon, was made out in the year 1728, by Nicholas Broutin, Esq. a Navy Engineer, and is styled: "Plan of New Orleans such as it was in 1728," and is attested as follows: "I, the undersigned, Captain and Engineer, do hereby certify the present plan to be correct. May the 15th, 1728." Signed, Broutin.

That the third and last of those plans is styled: "Plan of New Orleans, such as it was in 1732;" and that it is thereon mentioned, a circumstance which it is all important to advert to, that the levee in front of the city was then only twenty inches high, a difference almost incredible when its present height is taken into consideration.

That it appears that the plan annexed to the abovementioned work of Father Charlevoix, was made out from the three referred to, for it is styled: "Plan of New Orleans, taken from the manuscripts in the recording office of the Marine Charts, of N. B. Engineer of the N. 1744," these being initials most assuredly used to designate the name, surname, and official capacity, of Nicholas Broutin, Navy Engineer above mentioned," (Nicholas Broutin, Ingénieur de la Marine.)

That all those several plans prove, most conclusively, that the French Government, at the time of the foundation of New Orleans, had left, between the river Mississippi and the first row of houses fronting the same, a certain vacant space, not divided into town-lots, the breadth of which has considerably increased since, in consequence both of the alluvions of the river, and the works which the inhabitants have been successively making to the levee which protects the city against the overflowing of the Mississippi.

That this space so left open, must of course have been partly occupied by the levee then existing on the banks of the river, in front of the city, and by the public road extending along the levee; but that the balance of this space was evidently set apart for the use of the public, in conformity with the intentions of the founders, inasmuch as the said space is expressly designated in all those plans by the appellation of *quais*, a word which is to be found immediately after the first row of houses of this city, and which is used to mean that portion of land which it is customary, in the cities of France and Spain, to leave unoccupied between the port and the first row of houses, in order to facilitate the landing of vessels, or other water craft, and the transportation of goods and merchandise, or to be applied to other similar public wants.

That an additional fact, which goes still more completely to prove that all the space left vacant between the Mississippi and the first row of houses of New Orleans, was to remain open for the use of the public, agreeably to the intentions of the founders, is, that the frame buildings which it became indispensable for the French Government to have erected, and which were actually erected by them, which buildings are marked on the plan annexed to the work of Father Charlevoix, by letters N, O, P, Q, were situated out of the limits of the city and port of New Orleans, as described in the said plan.

That your honorable body may easily convince themselves of this fact by the mere inspection of the plan which your memorialist have annexed to the other documents herewith respectfully submitted to them; a plan which they have caused to be made out by Joseph Pilié, Esq. an Engineer and the city Surveyor, from the one contained in Father Charlevoix's work, this last plan being upon a scale much more reduced than the one upon which the plan by Nicholas Broutin has been made, but being, in all other respects, altogether similar to its original now on file in the archives of the City Council of New Orleans.

That, from this simple and correct statement of facts, your memorialists are induced to conclude that, even supposing that the inhabitants of the city of New Orleans should have no other title to rely upon, but the existence of the original plan of the foundation of their city, still your honorable body would find therein the most conclusive evidence, that, although the United States have succeeded to all the rights which the Governments of France and Spain previously had on Louisiana, since the discovery of the said country, yet the rights, so ceded to them, do not include that of alienating, to the damage and prejudice of the inhabitants of this city, any parcel of that space which the French Government, as founders of New Orleans, had left vacant, for the use of the public, between the Mississippi and the first row of houses of this city.

That, whenever a town is founded, by a private individual, upon a given plan, and the lots therein are sold by him accordingly, it is a settled principle that the plan must be taken as the criterion by which the respective rights of both the original owner and the purchaser, under him, are to be tried.

That, this position being incontrovertible, it would be subversive of every principle of reason and equity to contend that the same rule ought not to hold good between the sovereign who has founded a city, and has caused a regular plan of the same to be made out, and the individuals who have settled in the said city, under the expectation that the plan would be carried into execution in all its contents.

But, that the inhabitants of New Orleans, whose interests are represented by your memorialists, while they rely, with confidence, upon the rights secured to them by the original plan of the foundation of this city, have it in their power, moreover, to rest their claim upon the very letter of the civil laws which have always been in force in Louisiana, under its various changes of Government.

That it is expressly provided by the Spanish laws, which have, ever since the year 1769, been, and still are, in force in Louisiana, whenever they are not contrary to the Constitution of the United States, or have not been repealed or amended by the statutes of the State, that alluvions on the banks of rivers, either navigable or not navigable, shall belong to the riparian proprietors, to whose estates they may be added.

That the law 26, title 6, of Partida III, enacts, "That rivers sometimes swell to such a height, that they carry away a portion of one estate, and join it to another, situated elsewhere on their banks: wherefore, we say, that the earth which a river carries away from an estate, little by little, and imperceptibly, because not all in a body, becomes the property of him to whose estate it is carried, and he who lost it has no claim whatever to it."

That the reason assigned by commentators as the ground of so positive a provision, is, that, inasmuch as the riparian proprietors are exposed to all the losses which may be occasioned by the overflowing and irruptions of the rivers, along which their estates are situated, the legislator has thought proper to give them an adequate indemnification therefor, by ordering that they should profit by such accessions of land as the said rivers might add to their property.

That, if the above provisions be all equitable every where, they are still more so in lower Louisiana, wherein the inhabitants are obliged to keep in repairs, at their own expense, considerable levees, in order to protect themselves and neighbors from the inundations to which they are exposed, in consequence of the periodical swellings of the Mississippi.

That this law being couched in general terms, and making no difference between the riparian proprietors, either of urban or rural estates, it follows that the inhabitants of the city of New Orleans are equally as well founded to claim the benefit of its provisions, as the riparian proprietors of rural estates in lower Louisiana; and it is notorious, that the exercise of the right of the latter to the accessions of land made to their property by the Mississippi and other navigable rivers, has never been called in question.

That one single reflection will suffice to prove that there can be no difference, in this respect, between the riparian proprietors of urban and rural estates. It is this: that, should a part of the ground upon which the quais of New Orleans are situated, be carried away by the irruption of the river, the inhabitants of the city would inevitably be the only sufferers; and they alone would have to furnish and make, at their own expense, another levee and public road, in lieu of the ones which might have been, either entirely or partly, destroyed, in consequence of the said irruption.

That the suit which existed between the corporation of New Orleans and Edward Livingston, Esq., as to the right to the Batture of the suburb St. Mary, and the judgments given therein by the supreme tribunals of Louisiana, sufficiently prove, that, although the doctrine as to the right of ownership to alluvions and accessions of land on navigable rivers, had been more controverted in France than in Spain, the laws in the former country being less positive on that subject than in the latter, still the latest decisions of the highest courts of justice in France have at last solemnly settled that point, in conformity with the above cited law of the Partidas.

That, such being the rule by which the right of property to alluvions on navigable rivers is to be tried, it follows that the privilege of disposing, for the use and benefit of the corporation of New Orleans, of the town-lots lying between the first row of houses and the public road extending along the levee, claimed by your memorialists, is the more just and lawful, as they have it in their power to prove that those lots have been, as it were, created and formed, at the expense of the inhabitants of New Orleans, by the immense works which they have been incessantly making to the levee, under the various changes of Governments, and especially since the United States have taken possession of Louisiana.

That, among other depositions on oath, annexed to this memorial, together with other written documents, your memorialists beg leave to refer your honorable body to that of Joseph Pilié, Esq. by avocation an engineer and surveyor, who has been residing in New Orleans for upwards of twenty-two years, without interruption, who has been the city surveyor since the month of May, 1818, and whose duty, as such, has been, and still is, to oversee the public works of the city, and especially those made to the levee.

That the said deposition establishes the fact, that the works made to the levee of the square of the city of New Orleans, to the certain personal knowledge of this witness, that is to say, since the close of the year 1804, have been so considerable, and have so much increased the size and strength of the same, that the river having gradually left a part of its former bed uncovered, and that, too, having been filled up, little by little, by deposits of sand made by the river itself, especially in the upper and lower parts of the square of the city, the levee has been successively pushed forward, and extended towards the river in all its width, so that the public road now existing along the levee, in the lower part of the city, and the levee itself, in the upper part,

are both situated on what was but of late a part of the bed of the river, as your honorable body may see, by reference to the figurative plan of those augmentations in front of the city, which plan has been made out, by the witness in question, with a view to elucidate the facts, and explain more fully his deposition.

That this witness has, moreover, declared, that, from the observations which he had been enabled to make previously to his being appointed City Surveyor, and those made by him since, with still more accuracy, he has no hesitation in saying that the expenses which the inhabitants have had to bear, since Louisiana has been taken possession of by the United States of America, have, upon an average, amounted to at least three thousand dollars per annum, both for the repairs and augmentations made to the levee of the square of the city alone : That your honorable body will no longer be surprised at the enormity of the expenses so incurred for that object, when they are informed that the average height of the levee in front of the square of the city, which, in 1732. was only twenty inches, as before stated, is now from four and a half to five feet, by from fifty to one hundred in breadth, as proven by the testimony of Joseph Pilié, Esq., which is owing to the progressive increase of the swellings of the river, in consequence of its banks having been gradually cleared, and put in a state of cultivation, and new levees established which have obstructed and actually shut several of the natural old outlets of the Mississippi.

That Joseph Pilié declares. moreover, that he entertains no doubt that the existence of the town-lots within the space known by the appellation of quais, situated between the levee and the first row of houses, is owing altogether to its having been widened by the works which the inhabitants of New Orleans are incessantly making to their levee, at their own expense ; and also to this circumstance, which is common in the port of New Orleans, that the river, by leaving gradually a part of its former bed uncovered, and filling up the same, little by little, and imperceptibly, with deposits of sand, formed a real alluvion, which has enabled the inhabitants to push forward and extend the levee towards the river.

That, if your honorable body, after having duly weighed the facts proved by the said deposition, will turn to the evidence of Gallien Preval, Esq. the present Secretary of the Council, stating not only what he knows of his own personal knowledge, but what is the result of a thorough examination made by him of the records of the former *Cabildo* of this city, both going to establish the fact that the works to the levee in front of the square of the city, were always under the Spanish Government, that is, since the year 1769, made by its inhabitants, or the expenses thereof defrayed out of the funds of the City Treasury ; they will not hesitate to acknowledge the justice of the claim of the inhabitants of New Orleans, and that they will recognize that the City Council, in their capacity, do actually possess the right of exercising the privilege herein alluded to, without being reduced to the necessity of entering into a long discussion before the District Court, and being exposed, in order to have the injunction set

aside, to unnecessary delays and inconveniences, which must be the inevitable result of a judicial investigation.

That a powerful consideration which ought to determine your honorable body to grant the prayer of your memorialists, and to make use of the authority vested in them, in order to raise the obstacles which are the natural consequence of the injunction obtained by the District Attorney of the United States, is, that the statement herein respectfully submitted, shows, most conclusively, that the lots which the City Council wished to sell, are no part of the vacant lands, the ownership of which was transmitted to the United States by the treaty of cession of Louisiana, but do actually constitute a portion of the quais of the city; that is to say, of one of those things which the French Government, at the time of the foundation of New Orleans, had left free and open for the use and convenience of its inhabitants.

That, this being the real state of things, the sale of the town lots lying on the quais of New Orleans, cannot, in any manner, interfere with the useful dominion enjoyed by the United States, that is to say, the right of disposing of the vacant lands in Louisiana; and your memorialists therefore hope that your honorable body will be of opinion that the question relative to the sale of those lots, is not essentially within the province of courts of justice, and that they may take upon themselves to decide the same in favor of the inhabitants of New Orleans, without the interference of any tribunal, if they be convinced, as they must be, that the rights of the United States cannot be affected thereby.

That one of the reasons which induces your memorialists to cherish the hope that they will obtain what they solicit, is, that the General Government have already, in some measure, impliedly recognized that they had no right of property to the lots claimed by your memorialists.

That, towards the close of the year 1817, the City Council of New Orleans, being informed that the United States intended to have the lots in question sold, for their own use and benefit, as well as the public square and city hall of New Orleans, in the same manner that they had concluded to dispose of the ground on which Fort St. Charles formerly stood, of the barracks and navy yard, in this city, deemed it advisable to present a memorial to the General Government and Congress of the United States, with a view respectfully to lay before them the rights of the inhabitants of New Orleans to the lots in question.

That it appears that that memorial had the desired effect, and that the General Government recognized that the United States had no right to dispose, for their own benefit, either of the lots claimed by your memorialists, or of the public square or city hall of New Orleans: for Congress, by an act bearing date the twentieth of April, 1818, merely ordered the sale of the barracks and navy yard, in New Orleans, and made a donation, under certain conditions, to the corporation of this City, of the ground of the old Fort St. Charles.

That, therefore, if the United States have no right to dispose, for their own benefit, of the lots claimed by your memorialists, and if it

be true that the said lots have always been a part of the quais of New Orleans, the only point which remains to be inquired into by your honorable body, is with respect to the nature and extent of the rights of the inhabitants of this city to those things, which, since the foundation of New Orleans, have been left and appropriated to their common usage, such as the quais of the city ; even laying aside, for a moment, the consideration of the fact of accessions of land having been successively added to those quais, in consequence both of the progressive filling up of the port, and the works which the inhabitants of the city have been constantly making to the levee.

That, on this question, it may be contended that there are countries wherein no other privilege is granted to the inhabitants of cities, but that of enjoying such public things as are left for their use, the dominion of which, however, is retained by the sovereign. But, if such be the law in certain parts of the world, surely the provisions of the civil laws which govern Louisiana, are entirely in opposition to that doctrine, for they most emphatically give to the inhabitants of cities and towns a complete right of property to such public things as are appropriated for their use : that, in France, with the exception of the ports of Brest, L'Orient, Rochefort, and Toulon, which are Royal navy harbors, *quais* belong either to the people of cities, towns, or other settlements, or even to private individuals.

That the truth of this position is evidenced, 1st, by provisions contained in the *Ordonnance de la Marine*, and Valin's Commentaries thereon ; 2d, by police regulations made for certain ports.

1st. That, by the *Ordonnance de la Marine*, book 4th, title 1st, art. 20. it is provided, " that the expenses for keeping in good order and repairs the posts, buckles, and rings, put up and appropriated for making fast vessels, as well as the quais intended for the loading and unloading of goods, shall be paid out of the common fund of cities ; and the Mayors and Selectmen thereof shall see that this provision be carried into effect, under penalty of being personally responsible for the non-execution thereof."

On this provision, Valin says, " This is applicable to ports where-
" in there is no wharfage or quay duty imposed for the benefit of
" private individuals ; for, when such a duty does exist, they are to
" keep in good order and repairs, at their own expense, the said
" quays and wharves, as it is positively settled by the following ar-
" ticle :

" If the expenses for the keeping in good order and repairs be
" borne by the city, no doubt but that the Mayor and Selectmen there-
" of are authorized to levy and receive, for the use and benefit of the
" said city, the quay and wharfage duty "

The 21st article says, " They shall, nevertheless, be bound to keep
" quays, buckles, and rings, in good order and repairs, who enjoy the
" privilege of levying and receiving, in ports and harbors, custom or
" quay duties, under penalty of being deprived of the exercise of the
" said privilege, and the amount of the said duties being applied to
" put up anew the objects which have been destroyed by their negli-
" gence."

In commenting on this provision, Valin observes : "This point had already been so settled by the 27th article of M. D'Herbigny's regulations for the port of La Rochelle, by which it is made the duty of the harbormaster, in case of neglect, on the part of the owners, to make the necessary repairs to, and to keep in good order, their quays and wharves, to have the same done at their expense, by employing hands therefor."

Our article says, "Under penalty of being deprived of the privilege of levying and receiving the duties, and of the amount of the same being applied, to the putting up anew of the objects which have been destroyed by their negligence." But the 27th article of D'Herbigny's regulations, while it nearly reaches the same end, is, however, less severe as respects the owners of quais : for it operates no perpetual forfeiture of their privileges, &c. See 2d Valin, edition of 1760, page 439.

2dly. By the regulations for the police of the quai of La Rochelle, enacted on the 30th day of June, 1676, under the authority of the King, and alluded to by Valin, it is expressly provided, article 27th, "We order all such persons as receive wharfage duties, individually, to keep in good order and repairs their quais and wharves, to have them furnished with buckles for the making fast of shipping ; and we, moreover, command the harbormaster, in case of neglect on the part of said owners, to employ hands therefor, at their expense, so that the unloading of goods may easily take place thereon, and the mooring of the shipping be safe."

ART. 28. "Owners of quais and wharves shall furnish the necessary cables and stage timber, and shall be entitled to demand and receive one cent per ton for the unloading of merchandise," &c.—See 2d Valin, same edition, pages 416 and 417.

3dly. By an ordinance of the Admiralty at La Rochelle, bearing date the 7th September, 1720, in which the above regulations are ordered to be strictly carried into effect, the same words "proprietors of quays and wharves" are made use of in three instances, and applied to private individuals.

Now, unless it be shewn that, as regards the *quais* in New Orleans, France has deviated from such well established general rules, and declared, during the time that she was in possession of Louisiana, that the said *quais* should remain the property of the Crown, and be kept in repairs at the expense of the Royal Treasury ; unless it be shewn, further, that the said quais have ever been kept, maintained, or repaired, by the said Crown ; your memorialists think they are warranted in concluding that the Sovereign of France never was the proprietor of the said quais, and, consequently, could never transfer, either to the King of Spain, or, afterwards, to the United States, any right or title in, upon, or to, the same.

That, as to the laws of Spain, your memorialists think that they are likewise in favor of their claim. Indeed, the 9th law, title the 28th, of the third Partida, reads thus : "The things which belong exclusively to the commons of cities or towns, are the water fountains, the places where fairs and markets are held, or where the city councils

meet, the alluvions and sandy places on the banks of rivers, public places, race grounds, the forests and pastures, and all other such similar places as are appropriated and left for the use of each city, town, or other settlement of the same kind."

That it is evident, especially from the concluding part of the said law, that, in Spain, whenever the sovereign has founded a city, town, or other similar settlement, it may be said that he has, *ipso facto*, relinquished in favor of the people of the said city, town, or other settlement, his right of dominion over all such public things, as he leaves or appropriates to their use; and that, from that moment, the exclusive right of property to those things becomes unqualifiedly vested in them. Let us add here, as a confirmation in favor of the city of New Orleans, of the principles and arguments drawn from the laws of France, 1st. That, under the Spanish Government, the keeping in repair the *quais* and *levee* was a charge imposed upon the said city, which was, for that reason, authorized to receive a duty of three dollars from each vessel that moored, anchored, or unloaded, in its port. 2dly. That, by its charter of incorporation, the said city has been, and still is authorized to receive the said duty. 3dly. That it has, uninterruptedly, kept in repair, up to this day, not only the said levee but also the said *quais*.

That, moreover, the said civil laws prove that this right of property is not to be barely construed into a mere usage, although they do not actually allow city corporations to dispose of those things which belong to them in the same manner that private individuals may do with respect to their own property.

That the law 23d, title 32d, of the 3d Partida, enacts, "No one shall erect a house, or other building, or works, in the public places, vacant or threshing grounds, or roads which are common to cities, towns, or other settlements: for, as they are left open for the convenience and advantage of all who reside therein, no one shall presume to take possession of them, or labor there, for his own particular benefit. And, if any one contravene this law, that which he builds or erects, there shall be pulled down and destroyed. And, if the corporation of the place where the works are constructed, or the buildings erected, choose to retain them for their own use, and not to pull them down, they may do so; and they may make use of the revenue they derive therefrom, in the same manner as they would of any other revenue they possess."

That the last expressions used in the above law, clearly prove that the right of cities and towns to those things which are appropriated for the public convenience, does not consist merely of the right of using the same, but actually vests in them the power of disposing of them, so as to derive a revenue therefrom, as the said law positively expresses it.

That, not only are the inhabitants of cities, towns, or other similar settlements, possessed, in several instances, of the right of deriving a revenue from the public things appropriated for common use, by either renting or leasing them out, but they even may, in accordance

with the Spanish laws, grant to private individuals the privilege of enjoying the same, whenever some public advantage may result therefrom.

That this is a natural inference, flowing from the very words of the law 3d, of the said title 32d, of the 3d Partida, which are as follows: "If any one begin to erect, for his own private use, a new edifice, in a public square, street, or common threshing ground, of any city or town, without leave of the king, or the permission of the City Council (Cabildo) of the place wherein the building is erected, any of the inhabitants may forbid him to continue the work."

That, if it appears from the expressions contained in that law, that the Cabildo or Council of a city, town, or other similar place, may allow an individual to erect a building, or other constructions, on a public ground, the irresistible conclusion to be drawn from that provision, is, that the Cabildo or City Council can, *a fortiori*, exercise for themselves, and for the benefit of the city or town represented by them, the same privilege which they are empowered to grant to others.

That true it is, that the law 15, title 5, of the 5th Partida, provides, "That public places, such as public squares, streets, rivers, and water-courses, belonging to the king, or to the commons of any city, cannot be sold or alienated." But this prohibition, as to public things, which actually exists even in countries governed by the civil laws, ought not to be considered as intended to impair the right of property which the inhabitants of cities have over public things left for their use; but merely as a wise provision enacted, in order to prevent that those things should be diverted from their original destination, without strong reasons for so doing.

That, moreover, this provision restricting the right of alienating public things in the countries governed by the civil laws, is not always carried into execution, so as not to admit of an exception, whenever a material advantage may result in favor of the people of the place concerned, from the alienation of the same, or whenever their original destination may be changed, without any prejudice or inconvenience; provided it be with the express authorization of the sovereign—a doctrine which is laid down by several commentators.

That, if the rule which prohibits the alienation of such public things as belong to the commons of a city, were susceptible of no exception, it is plain that the inhabitants of a city or town would not have it in their power to extend it beyond its original limits, even in case of necessity, and of the measure being called for, in consequence of an increase of population, or of changes made by nature itself in the localities, whenever this extension could only be operated by a change in the original destination of those public things which had been left open for common use.

That if, for example, owing to the deposits of sand left by the Mississippi, the alluvion or batture, which is now forming in front of New Orleans, should so increase as to remove the port at a distance of several acres from the first row of houses, an event which is

not impossible, the river having, in several instances, withdrawn from, and abandoned its former bank; and if it should be held, that the vacant space of ground now lying between the river and the first row of houses, cannot be alienated, the commerce of this city would be exposed to the most serious inconveniences; for the distance between the shipping, and the stores and warehouses prepared for the reception of the goods and produce landed on the levee, would be so great, and the costs for transporting the same so heavy, that the inhabitants would perhaps be reduced to the necessity of abandoning the city.

That, at all events, the 1st and 13th sections of the act to incorporate the city of New Orleans, an act bearing date the 17th of February, 1805, have not only modified, but expressly repealed, the rule which provides that public things belonging to the commons of cities, towns, and other similar settlements, cannot be alienated or sold. The two sections above alluded to, vest in this corporation, not only such rights as were exercised by the inhabitants of New Orleans, and by its Cabildo, under the Spanish Government, but actually do give them the power of holding, possessing, and selling, all the real and personal property which they had a right or title to; which must, necessarily, include the rights and titles to those public things which the Spanish laws secured them the right of property to, and clothe them with the discretionary power of selling, and even giving away, those things, according to the exigencies of public interest.

That your memorialists, however, full of respect for the opinions of your honorable body, are willing to be considered in the light of applicants for leave to sell the lots in question, if such a permission be deemed necessary. That, at all events, your memorialists pray your honorable body to use the authority which they possess, in order to rid them from the opposition formed by the District Attorney of the United States, by passing an act in favor of the inhabitants of New Orleans, confirming all the legal, and, with due deference, incontrovertible right, which they have to the said lots, or relinquishing to them such rights as the United States may think they have thereto. if your honorable body have any the least doubt as to the validity of the titles by virtue of which the inhabitants of New Orleans claim the ownership of the said lots, and the privilege of disposing of the same.

That, should your honorable body be of opinion that the inhabitants of New Orleans have no title to the lots in question, still, there is a consideration which will, no doubt, determine them to relinquish, in their favor, all the rights which the United States may think they have thereto: it is this which is respectfully suggested by your memorialists. The proceeds of the sale of those lots, will enable them to pay, in part, the enormous expenses which they have now to incur for paying the city, and making other improvements, really indispensable for the prosperity of the commerce of New Orleans; improvements, which go, not only to promote the particular welfare of this city, but, also, to secure immense advantages to

the citizens of the Western States of the Union, and to the foreign traders who resort to this market for the sale of their produce and merchandise.

That, in order to be enabled to meet the expenses necessary for making the said improvements, the corporation of New Orleans have been obliged to apply to the Legislature of the State, that they might be authorized to borrow, on a long credit, the sum of six hundred thousand dollars; and that the two-thirds of the loan which they have been able to procure only at eight per centum per annum interest, are nearly spent for the paving of the most commercial streets of the city, and its incorporated suburbs.

That your honorable body must therefore be convinced that the proceeds of the sale of the lots which your memorialists claim the privilege of alienating, will be but a small indemnification for the expenses which they are now incurring for paving the city, as well as for the repairs and augmentations made to the levee; since it is hardly to be supposed, that the amount of the sale will exceed two hundred thousand dollars.

That your memorialists, before concluding this their memorial, for the length of which they have no better apology to offer, than the importance of the question examined therein, think it their duty to assure your honorable body that, while they solicit the confirmation of the rights of the inhabitants of New Orleans to the use and property of the quais of this city, and the permission of alienating the vacant town-lots on those quais, they lay no claim to the square whereupon the customhouse is built; and that, in case the inhabitants of this city should have any right and title to the same, they are willing and ready to give them up in their name and behalf, if your honorable body should think it necessary.

Wherefore, your memorialists pray, that your honorable body be pleased either to recognize and confirm the rights of the inhabitants of New Orleans to the use, property, and ownership, of the quais of this city; that is to say, of that space of ground left open for public use, and designated by that appellation in the several plans in this memorial alluded to, which were made at the time of the foundation of the city; or to relinquish in favor of the said inhabitants, the rights which the United States have to those quais, if any they be supposed to have; and also to grant to your memorialists leave to dispose, for the use and benefit of the corporation, by bargain and sale, or otherwise, of all the vacant town-lots lying on those quais, if such a leave be deemed necessary, and your memorialists will ever pray.

D. PRIEUY, *Recorder.*

J. ROFFIGNAC, *Mayor.*

To the Hon. Thomas Bolling Robertson, Judge of the District Court of the United States within and for the Eastern District of Louisiana.

The petition of the Attorney of the United States, within and for the said district, prosecuting in their name and on their behalf,

RESPECTFULLY STATES :

That the Mayor of the city of New Orleans, in pursuance of an ordinance of the City Council thereof, to that effect, has advertised for sale, for a day now past, and, as your petitioner is informed and believes, is about soon to advertise anew for sale, in lots, the vacant land included between Ursuline, Levee, and Garrison streets, and the public road in the city of New Orleans, and also the vacant land included between Custom House, Levee, and Bienville streets, and the public road in the said city.

Your petitioner, in the name and on the behalf aforesaid, further states, that, by the treaty of cession of the late province of Louisiana, by the then French Republic, to the United States of America, the United States succeeded to all the antecedent rights of France and Spain, as they then were in and over the said province, the dominion and possession thereof, including all lands which were not private property ; and that the dominion and possession of the said vacant land, so as aforesaid endeavored to be sold by the said City Council, had, ever since the discovery and occupation of the said Province, by France, remained vested in the sovereign, and had not, at any time, prior to the date of the said treaty, been granted by the sovereign to the said City Council.

Wherefore, and inasmuch as the said attempt of the said City Council to sell the said land as private property, is an invasion of the rightful dominion and possession of the United States, in the premises, your petitioner, prosecuting in the name and on the behalf aforesaid, prays that the Mayor, Aldermen, and Inhabitants, of the city of New Orleans, may be duly summoned to appear and answer this petition ; and that, in the meanwhile, they may be inhibited, by injunction, from proceeding further in the said attempt, or from doing any other act whatsoever, tending to invade the rightful dominion and possession of the United States in the said land ; and that, after due proceeding had, it may be ordered, adjudged, and decreed, that the said injunction be made perpetual.

And your petitioner, prosecuting in the name and on the behalf aforesaid, prays all other suitable and needful relief. And, as in duty bound, will ever pray.

J. W. SMITH,

Attorney of the United States, Eastern District of Louisiana.

J. W. Smith, the said attorney, being duly sworn, doth depose that the foregoing allegations are, as he doth verily believe, true.

J. W. SMITH.

Sworn to, before me,

T. B. ROBERTSON,

Judge for East District Louisiana.

The President of the United States of America to the Mayor, Aldermen, and Inhabitants, of the city of New Orleans, greeting :

Whereas, it has been represented to the District Court of the United States for the Eastern District of Louisiana, by the Attorney of the United States prosecuting therein their name and on their behalf, that the City Council of the said city, by an ordinance of the date of the 22d September, ultimo, have directed and required the Mayor of the said city to advertise for sale, and to sell at public auction, certain vacant ground in the city of New Orleans, which has been advertised by him by the description of three lots situated in Tchapioulas, Canal, and Common, and New Levee streets, marked No. 1, 2, and 3, on the plan made by the city surveyor; also two lots fronting on Tchapioulas street, between Canal and Common streets, marked No. 5 and 6, on the same plan.

Now, therefore, you, and each of you, are hereby strictly enjoined and commanded, that you, and each of you, do absolutely desist from all further proceedings touching the sale of the said vacant lands, and from every act whatever, tending in any way to invade or interfere with the dominion and possession of the United States in the said land, until the further order of this Court. Witness the Hon. Thos. B. Robertson, Judge of the said Court, at the city of New Orleans, this 12th November, A. D. 1827.

F. W. LEA, *Dep. Clerk.*

COURT OF THE UNITED STATES, }
Eastern District of Louisiana. }

I, Franklin W. Lea, deputy clerk of said court, do hereby certify the foregoing to be true copies of the original petition and injunction now on file in the Clerk's office, in the case of the United States vs. the Mayor, Aldermen, and Inhabitants, of New Orleans.

Witness my hand, and the seal of said court, at the city of New Orleans, this 21st day of November, in the year of our Lord, 1827.

F. W. LEA, *Dep. Clerk.*

EVIDENCE

In support of the claim of the Coporation of the City of New Orleans to the quais of that city.

Personally appeared before me, one of the Associate Judges of the City Court of New Orleans, Joseph Pilié, Esq. residing in the city of New Orleans, who, being duly sworn according to law, declares that he is, by avocation, an engineer and surveyor; that he has resided in the city of New Orleans for upwards of twenty-two years, without interruption; that he is the City Surveyor of New Orleans, in which capacity he was appointed in the month of May, 1818; that one of the duties of his office is to oversee the public works of this city, and

especially those made to its levee ; that, to his personal knowledge, the works to the levee of the square of the city of New Orleans, since the close of the year 1804, have been so considerable, and have so much increased the size and strength of the same, that the river having gradually left a part of its former bed uncovered, and that, too, having been filled up, little by little, by deposits of sand made by the river itself, especially in the upper and lower parts of the square of this city, the levee has been successively pushed forward and extended towards the river in all its width, so that the public road, now existing along the levee in the lower part of this city, and the levee itself in the upper part, are both situated on what was but of late a part of the bed of the river, as may be seen by referring to the figurative plan of those augmentations in front of this city, which plan is annexed to this declaration, and has been made out by him, this appearer, at the request of the City Council of New Orleans, with a view to elucidate the facts and explain more fully his deposition : and this appearer further declares, that, from the observations which he has been enabled to make previously to his being appointed City Surveyor, and those made by him since, with still more accuracy, he has no hesitation in saying that the expenses which the inhabitants of New Orleans have had to bear since Louisiana has been taken possession of by the United States of America, have, upon an average, amounted to at least three thousand dollars per annum, for both the repairs and augmentations made to the levee of the square of the city alone ; that those heavy expenses have become necessary, 1st, because the average height of the levee in front of the square of this city, which, in the year 1782, was only twenty inches, as appears by one of the plans of the city of New Orleans, deposited in the archives of the City Council, is now from three and a half to five feet, by fifty to one hundred feet in breadth, which is owing to the progressive increase of the swellings of the river, in consequence of its banks having been gradually cleared and put in a state of cultivation, and new levees established, which have obstructed and actually shut several of the natural old outlets of the Mississippi ; 2d, because, about the centre of the square of this city, that is, between St. Peter and St. Louis streets, the soil on which the levee stands has fallen and broken in so often, that it has become necessary to strengthen that part of it by means of works as considerable as they were expensive ; 3d, because the immense trade of which New Orleans is now the emporium, has made it indispensable to give to the levee, in all its extent, a sufficient breadth to facilitate the loading and unloading of such goods and merchandise as are brought into this port : and this appearer further swears, that he entertains no doubt that the existence of the town lots within the space known by the appellation of *quais*, situated between the levee and the first row of houses, is owing altogether to its having been widened by the works which the inhabitants of New Orleans are incessantly making to their levee, at their own expense, and also to this circumstance, which is common in the port of New Orleans and other parts of this State, that the river, by leaving gradually a part of its former bed

uncovered, and filling up the same, little by little and imperceptibly with deposits of sand, has formed a real alluvion, which has enabled the inhabitants of this city to push forward and extend its levee towards the river ; and this appearer further says, that he has attentively examined the plans of the city of New Orleans, which have been procured from the office of the Marine Charts at Versailles, which plans are three in number ; and that he has found that the plan engraved in Charlevoix's General History of New France, page 434, vol. the 2d, of the 4to edition of this work, published at Paris, in the year 1744, was made out from the three referred to, and is altogether similar to that drawn by Nicholas Broutin, Engineer of the French Navy, though upon a more reduced scale, which is the reason why he, this appearer, has annexed to this, his declaration, a copy of the plan which is engraved in the work of Father Charlevoix, and which he swears to be a true and faithful copy thereof in all its parts ; and this appearer finally swears, that he does verily think and believe that the word *quais*, which is placed on the three plans deposited in the archives of the City Council of New Orleans, alluded to as aforesaid, as well as on the plan engraved in Charlevoix's works, immediately after the first row of houses of this city, and not immediately after its levee, is a full evidence that it was the intention of the founders of the city of New Orleans to leave the space appropriated for the said *quais* vacant and free for the use of the inhabitants of New Orleans, as it is customary in most of the cities in France and Spain.

JOSEPH PILIE.

Sworn to, and subscribed, at the City of New Orleans, this twenty-seventh day of November, one thousand eight hundred and twenty-seven, before

A. DUBOURG,

Associate Judge of the City Court of New Orleans.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA.

By Henry Johnson, Governor of the State of Louisiana.

These are to certify that A. Dubourg, whose name is subscribed to the instrument of writing herein annexed, was, at the time of signing the same, and still is, one of the Associate Judges of the City Court of New Orleans, duly qualified and commissioned.

Given at New Orleans, under my hand, and Seal of the State, this first day of December, one thousand eight hundred and twenty-seven, and of the Independence of the United States, the [L. s] fifty-second.

In the absence of the Governor,

P. DERBIGNY,

Secretary of State.

Personally appeared before me, one of the Associate Judges of the City Court of New Orleans, Louis Moreau Lislet, Esq. and Counsellor at Law, residing in the city of New Orleans, who, being duly sworn agreeably to law, doth declare and say, that, some time in the year 1817, the City Council of New Orleans, being apprehensive that the General Government of the United States would sell the public square, the City Hall, the public prisons, of this city, and certain town lots lying on the *quais* of New Orleans, that is, on that space which has ever been left free for the public use, under that appellation, between the first rows of houses and the river Mississippi, as being a part of the vacant lands the property of which was transferred to the United States by the treaty of cession of Louisiana, did, in order to prevent the said sale, which the City Council considered as an encroachment upon the rights which the laws and usages of this country warranted to the inhabitants of the city of New Orleans, over and to the public things which the founders of this city reserved for their usage, present a memorial to the General Government and Congress of the United States, stating the claim, which, in their opinion, they have to the same, and the reasons why the said sale ought not to take place ; that, in support of the said memorial, they forwarded a copy of a plan of New Orleans, which they found engraved in the General History of *Nouvelle France*, by the Reverend Father Charlevoix, and which was mentioned therein as being a true copy taken from the manuscripts in the Recording Office of the Marine Charts, by Nicolas Broutin, Engineer of the French navy, in the year 1744 ; from which it appears that a certain space was left vacant and free for the public use, under the name of *quais*, between the first row of houses of the city of New Orleans and the river Mississippi : That the City Council being informed by the title of the said plan, that there existed charts and plans of the city of New Orleans, made out some time after its foundation, in the Navy Department, at Versailles, in France, which might be of a great use in support of the claim of the inhabitants of the city of New Orleans to the property of their *quais*, this appearer advised them, as being then, as he is now, the counsel for the said city, to take the necessary steps to procure authentic copies of the said plans, which they endeavored to obtain through the medium of Joseph M. De La Grange, Esq. and counsellor at law, at Paris, and the brother-in-law of him, this appearer, who did forward the said copies to the City Council by one Mr. St. Blancard, now deceased, who was the bearer thereof : That he, this appearer, having been called to be present at the opening of the packet containing the said plans, swears that the said plans were three in number, and identically the same which are now deposited in the archives of the City Council of New Orleans, and alluded to in the memorial to which this affidavit is annexed ; and this appearer further says that, having permanently resided in the city of New Orleans for these twenty-two years past and upwards, it is to his positive knowledge that all the expenses incurred for maintaining and repairing the levee, high road, and *quais*, in front of New Orleans, and its incorporated suburbs, to

wit : the suburbs St. Mary and Marigny, have always been, during all the said time, paid out of the city funds ; and that he has acquired the proof by the examination of the records of the Cabildo, under the Spanish Government, which are preserved in the archives of the City Council ; that those expenses were also paid out of the city funds, during all the time Louisiana was under the Spanish Government, that is, for maintaining and repairing the levee and *quais* in front of the square of this city.

L. MOREAU LISLET.

Sworn to, and subscribed, at the City of New Orleans, this 28th day of November, 1827, before

A. DUBOURG,

Associate Judge of the City Court of New Orleans.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA.

By Henry Johnson, Governor of the State of Louisiana.

These are to certify, that A. Dubourg, whose name is subscribed to the instrument of writing herein annexed, was, at the time of signing the same, and still is, one of the Associate Judges of the City Court of New Orleans, duly qualified and commissioned.

Given at New Orleans, under my hand, and seal of the State, this first day of December, one thousand eight hundred and twenty-seven, and of the Independence of the United States the [L. s.] fifty-second.

In the absence of the Governor,

L. DERBIGNY,

Secretary of State.

Personally appeared before me, one of the Associate Judges of the City Court of New Orleans, the honorable Gallien Preval, one of the Associate Judges of the said court, who, being duly sworn, agreeably to law, doth declare and say, that, ever since the month of March, in the year 1821, he has been, and still is, the Secretary of the City Council, and, as such, the keeper of their archives, among which are to be found the books containing the proceedings of the Cabildo of New Orleans, to whom the City Council have succeeded ; that the said books are four in number, all kept in due form, well preserved, and containing all the acts and deliberations of the Cabildo for the whole time that Louisiana remained in the possession of the Spanish Government, that is to say, from the 1st of December, 1769, the day when the said Cabildo were first organized, down to the month of January, 180—, the time when the said Cabildo ceased their functions, and were succeeded by the municipality, who, in their turn, remained in operation only for the short interval France retained the dominion of

Louisiana, until the moment the possession thereof was delivered to the United States; that the official signatures which are required by the laws and usages of Spain to make proceedings authentic, are regularly affixed to all the said deliberations, that is to say, the signatures of the several Spanish Governors who were, *ex officio*, the presidents of the Cabildo, as well as of the *Regidores* or members, and of the *Escribano* or Secretary, of the said Cabildo; and this appearer doth declare and say, that, from a thorough examination by him made of the deliberations contained in the said books, and more especially from the proceedings had in the months of May and August, 1774, March, October, and December, 1775, March, 1776, August, 1792, January, September, and November, 1793, August and December, 1794, February, November, and December, 1795, December, 1797, March, 1798, October and December, 1799, July, 1801, and January, 1802, which are recorded, folios 95, 97, 104, 112, 116, 121, 192, 204, verso, 223 do. 224 do. 226, 229, 230, verso, 255 do. 256, 266, and 273, verso, of the first and second of those books, and folios 22 verso, 23, 95, 102, verso, 103, 155, verso, 159 do. 224 verso, 225, and 234, verso, of the fourth of the said books—it is proven that all the expenses incurred for the keeping and repairs of both the levee of the city and the public road along the said levee, which expenses often amounted to large sums of money, were always defrayed out of the city funds, and that the Spanish Government never paid any, the least, proportion of the same; and this appearer further doth declare and say, that it is likewise proven by the said books, and especially by a deliberation had in the month of May, 1798, folio 109 verso, of the fourth of those books, that a tax of three dollars, was actually levied upon every vessel arriving at the port of New Orleans, whatever might be her size or tonnage, as a compensation for the right given to the said vessels of landing their goods on the levee, which was kept in repairs exclusively at the expense of the city, which tax was collected by the *Mayordomo*, or Treasurer of the city, for the use and benefit of the same; and this appearer moreover doth declare that there are, among the archives of the City Council, of which he has the keeping, three plans of the City of New Orleans, which are evidently copies of the manuscript ones filed in the office of the Marine Charts at Versailles, viz: The oldest, entitled “Plan of the City of New Orleans, whereupon is marked the levee which protects it against inundation, together with such additional buildings as had been erected since the first of September, 1723,” at the foot of which plan the following words are written: “New Orleans, May the 29th, 1724, signed De Paugé.” The next plan, entitled “Plan of New Orleans such as it was in 1728, and at the foot of this; I, the undersigned Captain and Engineer, do certify the present plan to be correct. May the 15th, 1728. Signed, Broutin.” That the copy of this second plan is authenticated by several legalizations, the first of which is in the following words and figures: “A true copy. The Vice Admiral, Director General of the Depot of Charts and Plans of the Navy and Colonies. Paris, November the 22d, 1819. Signed, Rosilly.” That

the second legalization is as follows : "I certify the above to be the true signature of Count de Rosilly, Vice Admiral, Director General of the Depot of Charts and Plans of the Navy and Colonies. Paris, December the 15th, 1819. For the Minister and Secretary of State for the Navy and Colonies, and by his authorization. The Secretary General of the Department. Signed, V. Vauvilliers, with the seal of the Department." That the third legalization, which is the one by the Minister of Foreign Affairs, is as follows : "The Minister of Foreign Affairs certifies that the signature of Mr. Vauvilliers, the Secretary General of the Department of the Navy, is genuine. Paris, the 16th of December, 1819. By authorization of the Minister, the Master of Requests, and Chief of the Chancery. Signed, Prevost. By the Minister, the Chief of the office of Passports and Legalization. Signed, Bruslé, with the seal of the Department of Foreign Affairs." That the fourth and last of the said legalizations is by Isaac Cox Barnet, Esq. the Consul General of the United States of America, at Paris, to wit : "Consulate of the United States of America, Paris. I, Isaac Cox Barnet, Consul of the United States of America for Paris, and Agent of Claims, do hereby certify that the above signatures are truly those of Messrs. Prevost, Master of Requests, Chief of the Chancery of the Department of Foreign Affairs of the Kingdom of France, and Bruslé, Chief of the Passports and Legalization Office of the same department, and that to all acts by them so signed, full faith and credit are due in judicature and thereout. In testimony whereof, I hereunto set my hand and seal of office, at Paris, the 18th day of December, 1819, and in the forty-fourth year of the independence of the said United States. Signed I. Cox Barnet, Consul U. S." and sealed with the seal of the said consulate. That the third and last of the said plans is entitled : "Plan of the city of New Orleans, such as it was in 1732;" and that at the foot of the said plan, to which no signature is affixed, there is the following note : "That the levee of New Orleans was at that time only twenty inches high." And this appearer does further depose and say, that it is to his knowledge, that, ever since the United States have taken possession of Louisiana, by virtue of the treaty of cession, the expenses for keeping in repairs the levee of the city of New Orleans and its incorporated suburbs, as well as the public road extending along the levee, have always been defrayed by, and paid out of, the city funds, exclusively.

GALLIEN PREVAL.

Sworn to, and subscribed before me, at New Orleans, this 29th November, 1827.

E. D. WHITE,

Presiding Judge of the City Court of New Orleans.

UNITED STATES OF AMERICA.

STATE OF LOUISIANA.

By Henry Johnson, Governor of the State of Louisiana.

These are to certify that E. D. White, whose name is subscribed to the instrument of writing herein annexed, was, at the time of signing the same, and still is, presiding Judge of the City Court of New Orleans, duly qualified and commissioned.

Given at New Orleans, under my hand, and seal of the State, this first day of December, one thousand eight hundred and [L. s.] twenty-seven, and of the Independence of the United States the fifty-second.

In the absence of the Governor.

P. DERBIGNY, *Secretary of State.*

PLAN DE LA NOUVELLE-ORLEANS sur les Manuscrits du Depot des Cartes de la Marine Par N.B. Ing^r de la M. 1744.

A. Eglise Paroissiale desservie par les Capucins. G. Intendance.

B. Place d'Armes.

H. Hôpital.

C. Convent des Capucins.

I. Ursulines.

D. Prisons.

K. Magasins du Roi.

E. Corps de garde.

L. Casernes.

F. Gouvernement.

M. Forges du Roi.

Corps de garde.

N. Moulin a vent et a cheval.

Q. Cabanes des Negres, qui prennent soin du moulin.

O. Hangard de la Marine sous lequel
on construit.

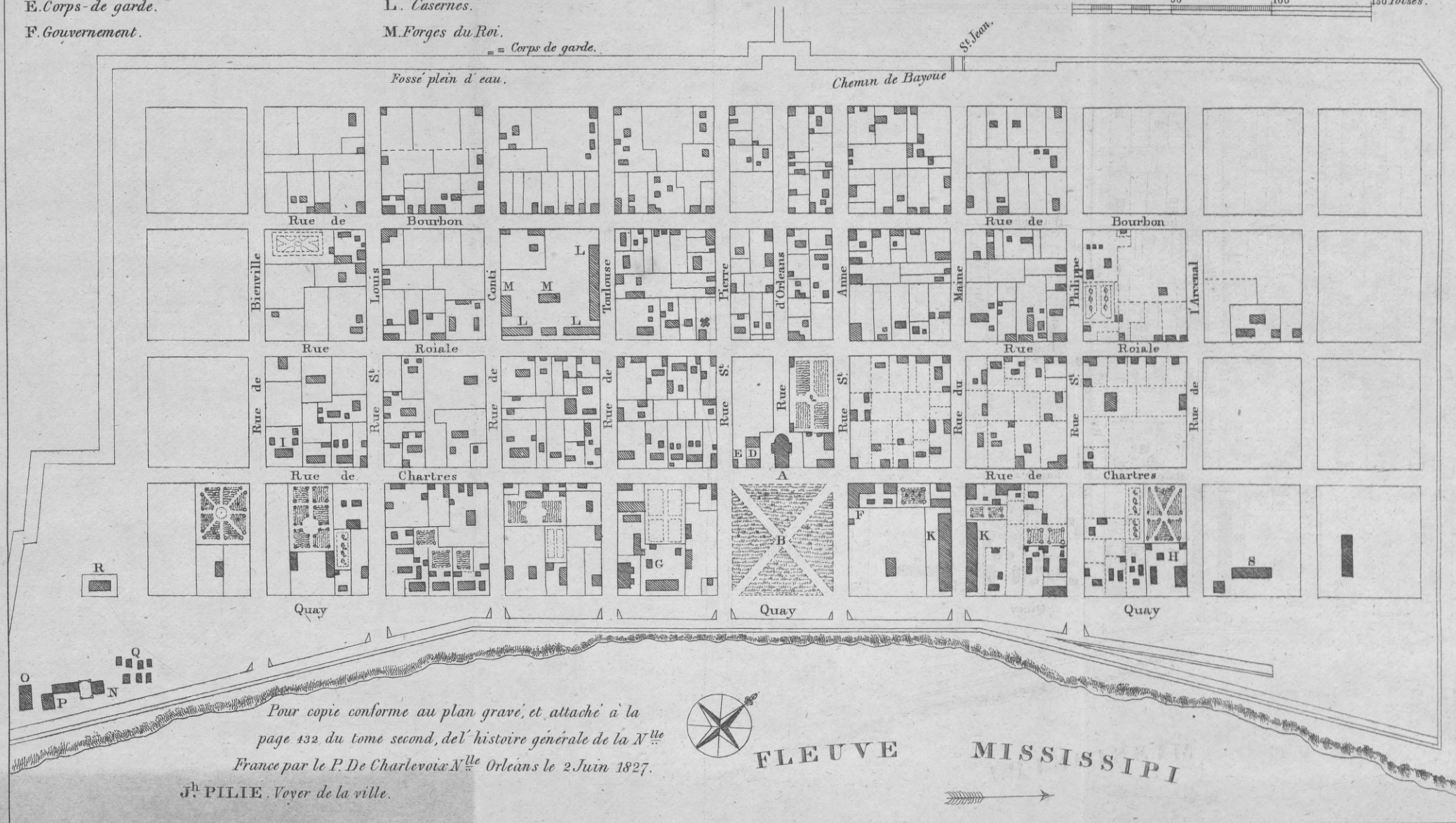
R. Poudrière.

S. Nouvelle maison des Ursulines.

P. Corps de garde des Bourgeois.

Echelle

50 100 150 Toises.



Pour copie conforme au plan grave, et attaché à la
page 432 du tome second, de l'histoire générale de la N^{lle}
France par le P. De Charlevoix N^{lle} Orleans le 2 Juin 1827.

J^h PILIE. Voyer de la ville.



FLEUVE

MISSISSIPPI

